

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 11-O-14076-LMA
)	
DENNIS REID HOPTOWIT,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 61544,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Dennis Reid Hoptowit (respondent) was charged with failing to release a client file and failing to cooperate in a disciplinary investigation. He failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC), and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

¹ Unless otherwise indicated, all references to rules are to this source.

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on December 18, 1974, and has been a member since then.

Procedural Requirements Have Been Satisfied

On December 12, 2011, the State Bar properly served the NDC on respondent by certified mail, return receipt requested, at his membership records address. While the State Bar did not receive a return receipt, the United States Postal Service did not return the NDC as undeliverable or for any other reason. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The NDC was properly filed with the State Bar Court on December 16, 2011.

Thereafter, the State Bar called respondent at his membership records telephone number and left a voicemail message informing respondent of the deadline to respond to the NDC and requesting that he contact the State Bar. The State Bar called respondent and left similar voicemail messages at two other telephone numbers located by a State Bar investigator. The State Bar's investigator located additional possible telephone numbers for respondent, but all of these numbers were either disconnected, wrong numbers, or did not permit the caller to leave a message. The State Bar also sent a letter requesting a response to a possible alternate address identified by the State Bar investigator. Despite these efforts, the State Bar did not hear back from respondent.

Respondent failed to file a response to the NDC. On January 13, 2012, the State Bar filed and properly served a motion for entry of respondent's default. The motion complied with all

the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on January 31, 2012. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On August 29, 2012, the State Bar filed a petition for respondent's disbarment. As required by rule 5.85(A), the State Bar reported in the petition that (1) it has had no contact with respondent since the default was entered; (2) there are two other disciplinary matters pending against respondent;³ (3) respondent has three prior records of discipline;⁴ and (4) respondent has one pending claim with the Client Security Fund. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on September 25, 2012.

³ At the time the petition for disbarment was filed, the present case was consolidated with case no. 11-N-19067. The court, on its own motion, issued an order severing the two matters. Consequently, respondent now has three other disciplinary matters pending against him.

⁴ The State Bar combined respondent's second discipline with his subsequent probation revocation, and reported that he had only two prior records of discipline. The court, however, finds that respondent's probation revocation stands on its own and constitutes a third record of discipline. (See *Barnum v. State Bar* (1990) 52 Cal.3d 104, 113.)

Respondent has been disciplined on three prior occasions.⁵ Pursuant to a Supreme Court order filed on October 5, 1999, respondent was suspended for 90 days, the execution of which was stayed, and he was placed on probation for one year. In this matter, respondent stipulated to misconduct involving his failing to deposit client funds in trust, commingling personal funds in trust, failing to communicate, and his criminal conviction for driving under the influence of alcohol.

Pursuant to a Supreme Court order filed on August 31, 2011, respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for two years, including a 90-day period of suspension. In this matter, respondent stipulated to misconduct including failing to release client files (two counts), failing to cooperate in disciplinary investigations (two counts), commingling personal funds in trust, and receiving another criminal conviction for driving under the influence of alcohol.

Pursuant to a Supreme Court order filed on June 12, 2012, respondent's probation was revoked and he was suspended for a minimum of two years and until he provides proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law. In this matter, respondent was found culpable of failing to comply with the terms of his disciplinary probation. Respondent did not participate in the proceedings.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that

⁵ The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence, and directs the Clerk to include copies in the record of this case.

respondent is culpable as charged and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

Case Number 11-O-14076 (The Stanley Matter)

Count One – respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failing to release file) by failing to promptly release his client’s file upon termination of employment and at the request of the client.

Count Two – respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to provide a written response to the allegations in a disciplinary investigation or otherwise cooperate in the investigation of this matter after being contacted by the State Bar.

Disbarment is Mandated under the Rules of Procedure

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent’s disbarment must be recommended. In particular:

- (1) the NDC was properly served on respondent under rule 5.25;
- (2) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default, as the State Bar called and left voicemail messages requesting a response at respondent’s membership records telephone number and possible alternative telephone numbers identified in the State Bar’s investigation, telephoned other possible numbers for respondent, and sent a letter requesting a response to respondent at a possible alternative address identified in the State Bar’s investigation;
- (3) the default was properly entered under rule 5.80; and
- (4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule, or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court must recommend his disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Dennis Reid Hoptowit be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Dennis Reid Hoptowit, State Bar number 61544, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rules Proc. of State Bar, rule 5.111(D).)

Dated: December ____, 2012

LUCY ARMENDARIZ
Judge of the State Bar Court